IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 1075/2002
Reserved on: 4.5.2007
Date of decision 28.5.2007

Smt. Kaushalya Thakur. …Petitioner.

Versus

Land Acquisition Collector & others. …Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No.*

For the petitioner : Mr. Ashok Sood, Advocate

For the respondent No.1 & 3 : Mr. M.S. Chandel, Adovcate General with Mr. M.A. Khan, and Ms. Meenakashi Sharma, Dy.As.G.

For the respondents No.2 : Mr. Shrawan Dogra, Advocate.

Rajiv Sharma, J. (Oral)

By way of this petition, the petitioner is seeking the following reliefs:

i) **"The respondents be ordered and directed to initiate proceedings for acquision of land comprised in Khasra No. 446 measuring 35.30 sq. Metres utilized and used by them for construction of Nali/drain and to complete the same and pay compensation within the reasonable time.**

ii) **The entire record of the earlier Writ Petition and record of Municipal Corporation Shimla in respect of acquisition proceedings initiated on the orders of this Hon'ble Court and record of demarcation report be ordered to be called for and perused by this Hon'ble Court.**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

iii) That cost of this writ petition be also awarded to the petitioner against the respondents.

iv) Any other suitable relief as deemed fit under the facts and circumstances of the case may also be granted to the petitioner against the respondents."

The brief facts necessary for the adjudication of this case are that the petitioner is the owner of land compromising khasra Nos. 444, 446 449, 450, 451, 452, 453, 454, 455 and 456 situated at Mauza Kaithu-2, Mohal Kaithu, Tehsil and District Shimla, H.P. The respondent No.2 had constructed a sewerage pipe-line and drain on the land of the petitioner without acquiring the same in accordance with law by utilizing 138.56 sq. mtrs. of the land. He was not paid any compensation by the respondents for utilizing land of the petitioner situate in khasra Nos. 456/1, 444 and 446. He approached this court by way of CWP No. 1644/1993 seeking direction to the respondents to acquire the land and pay the compensation to him. This court while disposing of the writ petition on 1.9.1994 had directed the Naib Tehsildar (Settlement) (Urban) Circle-III to carry out demarcation and in the demarcation if it is found that some land of the petitioner has been used for laying the sewerage by Municipal Corporation, Shimla, proceedings of acquisition will be initiated within two months from the date of demarcation. Pursuant to the directions issued by this court on 1.9.1994 in CWP No. 1644/1993, the Naib Tehsildar carried out the demarcation. The copy of the report is at page 22 of the paper book. The concluding portion of the report of the Naib Tehsildar is reproduced below for appreciating the submissions made by the counsel for the parties:

> **"Therefore, total land belonging to Smt. Kaushlaya Devi in Khasra No. 456/1, 444 and 446 kita 3 measuring 138.56 sq. mt. has been used by the Municipal Corporation Shimla for laying sewerage and drain pipe on the spot, which is existing on the spot. Statements of Ramesh Kumar and Patwari Municipal**

Corporation Shimla are recorded, in whose presence demarcation was done on the spot. Report is submitted for perusal of the Hon'ble High Court please."

On the basis of the demarcation report, the respondent-State through Commissioner-cum-Secretary (LSG) issued notification for acquiring land measuring 103.26 sq. mtrs. comprised khasra No. 456/1 and khasra No. 444 only, but area measuring 35.30 sq. metrs. comprised in khasra No. 446 utilized by the Municipal Corporation, Shimla for construction of drain/Nali was left out. The Land Acquisition Collector/ Sub Divisional Officer (Civil) made the award on 6.1.1998 only for the area measuring 103.26 sq. mtrs. The petitioner filed CMP No. 886/2001 in CWP No. 1644/93 seeking clarification of the earlier judgment dated 1.9.1994. The application was disposed of by this court on 12.11.2001 reserving the right to the petitioner to take recourse as may be available to him.

Mr. Ashok Sood, Advocate while appearing on behalf of petitioner on the basis of the report Annexure P-6 had argued that the land measuring 35.30 sq. mtrs. comprised in khasra No. 446 could not be left out from the acquisition. Mr. Sood has further argued that it has come in the report of the Naib Tehsildar that the land measuring 35.30 sq. mtrs. comprised in khasra No. 446 has also been utilized by the respondent No.2-corporation as such the petitioner was entitled to get the compensation for the same.

Mr. Shrawan Dogra, Advocate appearing on behalf of respondent No.2-corporation has submitted that the drain (Nalah) is in existence from the time immemorial and was passing through the land of the petitioner in its natural flow/course.

I have heard the parties and perused the record.

It has come in the report of the Naib Tehsildar that the total land belonging to the petitioner in khasra No. 456/1, 444 and 446 kita 3 measuring 138.56 sq. mtrs. has been utilized by the Municipal Corporation, Shimla for laying sewerage and drain pipe on the spot. On the basis of the report it is evident that the entire chunk of land i.e. 138.56 sq. mtrs. was utilized by respondent No.2-corporation for laying sewerage pipe line and drain but the Commissioner-cum-Secretary (LSG) has issued notification for acquiring the land measuring 103.26 sq. mtrs comprising khasra No. 445 and 444 only. In view of the demarcation report carried out by the Naib Tehsildar on the basis of the directions issued by this court on 1.9.1994 in CWP No. 1644/93 the stand taken by the Municipal Corporation is untenable. The only stand taken by the respondent-corporation in its reply to the writ petition is that the drain (Nalah) is in existence from time immemorial and is passing through the land of the petitioner in its natural flow/course and the land of the petitioner was not utilized by the corporation. Mr. Ashok Sood has also drawn the attention of this court to the photographs attached with the rejoinder from which it appears that the pucca drain exists on the spot. Mr. Sood has also submitted that as per the revenue papers the Nalah was not in existence, but it has come to be recorded for the first time in the Missal Hakiat Bandobasti Jadid and the drain presently shown in khasra No. 446 was carved out from old khasra No. 161 and the Jamabandi for the year 1980-81 was just prior to the settlement which shows nature of khasra No. 161 as *'Lehari Abbal'*.

In view of the overwhelming evidence on record, the respondent-corporation could not deny the utilization of the land of the petitioner for the construction of Nalah comprised in khasra No. 446 measuring 35.30 sq. mtrs. This court is of the opinion that once the land of the petitioner

measuring 35.30 sq. mtrs as per the report of the Naib Tehsildar and revenue paper has been utilized by the respondent-corporation, the petitioner is entitled to compensation.

The land is a property within the meaning of Article 300-A of the Constitution of India and if the same is to be utilized, the citizens are entitled to compensation for the same in accordance with law. The Commissioner-cum-Secretary (LSG) while issuing notification for acquiring the land of the petitioner should have included the entire land measuring 138.56 sq.mtrs. instead of confining to 103.26 sq. mtrs of land for which the petitioner has been paid the compensation.

The upshot of the above discussion is that the petitioner's land measuring 35.30 sq. mtrs. has been utilized by the respondent No.2-corporation for the construction of the Nalah without paying any compensation to her.

Accordingly this petition is allowed. The respondents are directed to initiate proceedings for acquisition of land measuring 35.30 sq. mtrs. comprised in khasra No.446 under the Land Acquistion Act, 1894 and pay the compensation to the petitioner within a period of 6 months from the date of receipt of copy of this judgment. The petitioner is held entitled to costs which are quantified at Rs. 3,000/-.

(Rajiv Sharma), Judge

May 28, 2007
Awasthi